IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27/03/2003

Coram

The Honourable Mr.B.SUBHASHAN REDDY, Chief Justice
and
The Honourable Mr. Justice D. MURUGESAN

W.A. No.1410 of 2003
and
W.A.M.P. Nos.1801 and 1835 of 2003
and
W.P. No.8972 of 2003

Bharat Petroleum Corpn. Ltd.
Rep. By its Dy. General Manager (HRS) South,
T. Somnath,
Chennai - 600 040. ... Appellant/
Petitioner in WP

-Vs-

1. Petroleum Employees Union,
rep. By its General Secretary,
P.S. Janardhanan,
Guruswamy Buildings,
6, Kachaleeswarar Street,
CHENNAI - 600 01.

2. Petroleum Workers Union,
rep. By its General Secretary,
G. Saravanan,
35, Vaidyanathan Street, Tondiarpet,
CHENNAI.

3. The Regional Labour Commissioner,
Mumbai.

4. Regional Labour Commissioner (Central),
Shahstri Bhavan, Haddows Road,
CHENNAI. ... Respondents
both in WA
and WP

Prayer in W.A.

Appeal against the order of the learned single Judge dated 24.3.2003
passed in W.P. No.8972 of 2003.

Prayer in W.P.

Petitioner under Article 226 of the Constitution of India to issue
Writ of Mandamus for the reasons stated therein.

!For Appellant/Writ Petitioner : Mr. A.L. Somayaji,
Sr. Counsel for
M/s.T.S. Gopalan

^For Respondents 1 and 2 : Ms. R. Vaigai

:J U D G M E N T

THE HON'BLE THE CHIEF JUSTICE

This Writ Appeal is directed against the order of the learned single Judge dated 24.3.2003 made in W.P. No.8721 of 2003 ordering notice to the respondents. The writ petition came to be filed as the respondents 1 and 2 resorted to strike pursuant to a strike notice issued thereto. The relief sought for is to issue a Writ of Mandamus or any other appropriate writ or direction forbearing the respondents 1 and 2 from resorting to illegal strike pursuant to their notice dated 5.3 .2003 and pass such other orders as this Court may deem fit. The Writ Appeal was admitted on 25.3.2003 and interim order, as sought for in W.A.M.P. No.1801 of 2003, was granted. A petition in W.A.M.P. No.1 835 of 2003 has been filed by the respondents 1 and 2 to vacate the said order.

2. While the appellant is the Bharat Petroleum Corporation, respondents 1 and 2 are the employees' unions. The total number of employees, who are the members in the above unions are stated to be 1,200 in number, both put together and their work relates to marketing.

3. Mr. A.L. Somayaji, learned senior counsel, appeared for the writ appellant while Ms. R. Vaigai, learned counsel, appeared for the respondents 1 and 2. The strike period, as notified by the respondents, is from 6.00 a.m. of 25.3.2003 to 6.00 a.m. of 28.3.2003. It is stated that the injunction, which has been granted by this Court on 25.3.20 03, was brought to the notice of the respondents 1 and 2 and from the evening of 25.3.2003, the strike, in so far as the Southern Region is concerned, has been discontinued hoping to continue the same in the event of the injunction order being vacated.

4. We have heard both the learned counsel at length and we are not only disposing of the writ appeal but also the writ petition for the reason that after 06.00 a.m. tomorrow i.e. on 28.3.2003, no cause of action survives for adjudication.

5. Ms. R. Vaigai, learned counsel, fairly stated that she is not addressing the Court with regard to maintainability of the writ appeal as it is filed against the order issuing notice. When we admitted the writ appeal, we were alive to the situation that by the time the notice is served

and interlocutory application in the writ petition is heard, the writ petition would become infructuous. As such, we have construed the order issuing notice and in not granting the ex parte order as amounting to the rejection of the order by which irreparable injury ensues. Anyhow, we need not elaborate this any further as the learned counsel for the respondents 1 and 2 has categorically stated before us that she is not raising that point and seeking adjudication on merits.

6. At the time of passing of the injunction orders on 25.3.2003, similar orders passed by the High Court of Bombay was submitted before us for perusal and now it is not disputed that even the High Courts of Kerala and Delhi had passed similar orders.
7. Mr. A.L. Somayaji, learned senior counsel, had strongly relied upon clause (d) of sub-Section (1) of Section 22 of Industrial Disputes Act. We are of the considered view that there was a prima facie case and balance of convenience in favour of the appellant for issuance of the injunction and that injury which will be inflicted not only on the appellant but also the public in general, would irreparable. Now that we are disposing of the writ appeal itself along with the writ petition, the considerations would be different as we have to dwell on the respective contentions of either counsel touching upon the merits of the case.

8. Mr. A.L. Somayaji, learned senior counsel, appearing for the appellant, raised the following contentions:

(1) As the conciliation is pending pursuant to the requisition sought for by the appellant, pending the said conciliation proceedings, the members of the respondents 1 and 2 cannot resort to strike as the same is prohibited under Section 22 (1) (d) of Industrial Disputes Act, 1947.

(ii) Six weeks notice, as mentioned in Section 22 (1) (a) of the Act, has not expired and as such, this strike is illegal.

(iii) In any event, as the self lease rental dispute is pending adjudication in Industrial Dispute, the strike notice is illegal.

9. Ms. R. Vaigai, learned counsel appearing for the respondents 1 and 2, countered the said arguments submitting that as there is no Industrial Dispute, even according to the appellant, the question of conciliation does not arise and resort to Industrial Disputes Act is misconceived. She also submits that each of the clauses of sub-Section (1) of Section 22 of Industrial Disputes Act has to be read separately and not in conjunction and as the strike notice satisfies clause (b) of sub-Section (1) of Section 22, it is valid. She further submitted that a conciliation or a dispute is restricted to the issue involved and there cannot be any omnibus embargo placed on the strike unrelated to the conciliation proceedings or industrial dispute and that pendency of an Industrial Dispute relating to the self lease rental has got no relevance to place restraint on the instant strike.

10. We shall now deal with the contentions 2 and 3 raised on

behalf of the appellant. We feel it apt to extract Sections 22, 23 and 24 of Industrial Disputes Act, 1947, as they are relevant for adjudication. They read thus,

22. Prohibition of strikes and lock-outs. - (1) No person employed in a public utility service shall go on strike in breach of contract -

(a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of strike specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(2) No employer carrying on any public utility service shall lockout any of his workmen-

(a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking-out; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(3) The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may, lock-out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.

(4) The notice of strike referred to in sub-Section (1) shall be given by such number of persons to such person or persons and in such manner as may be prescribed.

(5) The notice of lock-out referred to in sub-section (2) shall be given in such manner as may be prescribed.

(6) If on any day an employer receives from any persons employed by him any such notices as are referred to in sub-section (1) or gives to any person employed by him any such notices as are referred to in sub-Section (1), he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe, the number of such notices received or given on that day.

23. General prohibition of strikes and lock-outs.- No workman, who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out-

(a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;

(b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings.

(bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3-A) of Section 10-A; or

(c) during any period in which a settlement or award is in operation in respect of any of the matters covered by the settlement or award.

24. Illegal strikes and lock-outs.- (1) A strike or lock-out shall be illegal if -

(i) it is commenced or declared in contravention of Section 22 or Section 23; or

(ii) it is continued in contravention of an order made under subsection (3) of section 10 or sub-section (4-A) of Section 10-A.

(2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under subsection (3) of Section 10 or sub-Section (4-A) of Section 10-A.

(3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

11. Sub-Section (1) of Section 22 of the Act prohibits the strike enumerating the four conditions and, as rightly pointed out by Ms. Vaigai, the prohibition should come in either of the said four clauses and not on a composite reading of the clauses. If the strike notice satisfies either of the conditions stated in clauses (a) to (d) of Section 22 (1), the strike cannot be prohibited and consequently, cannot be termed illegal. As the strike notice has been given on 5.3.2003, the prohibition contained in clause (b) of Section 22 (1) is inapplicable. It does not matter if six weeks does not expire, which is the condition in clause (a) thereof. Clause (c) of Section 22 (1) is also inapplicable. We have to then consider only regarding the applicability or otherwise of the prohibition contained in clause (d). We will deal with the same as the contention No.1 Before that, dealing with the

second contention raised by Mr. Somayaji, learned senior counsel, we accept the argument of Ms. Vaigai that any and every conciliation proceeding or industrial dispute cannot be a bar for going on strike. Section 23 of the Act has got no such comprehensive application. The prohibition contained in Section 23 of the Act has to be confined only to that conciliation proceeding or industrial dispute relating to a particular issue for adjudication and the issue pending adjudication in industrial dispute pursuant to the order dated 22.10.2002 passed in W.A. No.3118 of 2002 is only relating to self lease rental and thus cannot be read as a bar for going on strike on other issues and the issue/demand, which is presently raised by the respondents 1 and 2 along with other workers' union, is totally unrelated to the pending Industrial Dispute. Hence, we are of the considered view that unless the strike is banned within the meaning of clause (d) of Section 22 (1), the same cannot be termed illegal attracting Section 24 of the Act.

12. To adjudicate this issue, a reading of the strike notice and annexures thereto is necessary and they are as follows:

"PETROLEUM EMPLOYEES' UNION
(Regd. No.30/MDS)

President: Communication Address:
N.G.R. Prasad General Secretary, PEU.,
Advocate. Bharat Petroleum
Corporation Ltd.
1, Ranganathan
Gardens,
Secretary General: Anna Nagar (West),
Chennai - 40.
T.S. Rengarajan Phone : 621 6869
Extn.: 2040 & 2110
General Secretary:
P.S. Janardhan
REF: PEU/M/11/2003 Date: 05.03.2003

The Chairman & Managing Director,
Bharat Petroleum Corporation Limited,
Bharat Bhavan I,
Mumbai - 400 001.
Respected Sir,

Sub: Strike Notice

Gravely concerned by the Disinvestment Policy of the Government of India with regard to M/s.BPCL & M/s.HPCL respectively, the Trade Unions in the Oil Industry (BPCL & HPCL in particular) created a National United Forum to express our strong and emphatic disapproval to the Government in the matter of privatisation of these two huge profit making Corporations. It was decided in the meeting held on 27.2.2003 at New Delhi that all workmen both in Refining and Marketing activities of M/s.BPCL and M/s.HPCL would go on strike for 3 days from 25.3.03 6 A.M. to 28.3.03 6 A.M. to press their demands mentioned

in the annexure.

Please take note of this treating this as a notice of strike. In this connection, we enclose a copy of the Strike Notice addressed to the Hon'ble Minister for Petroleum and Natural Gas duly signed by various Trade Unions including our union P.E.U (BPC Unit) for your information and records.

Thanking you,

Yours faithfully,
For Petroleum Employees' Union (BPC Unit)

Sd/-

P.S. JANARDHANAN
GENERAL SECRETARY"

"The Hon'ble Minister February 27, 2003.
Petroleum and Natural Gas
Government of India
201-A, Shastri Bhavan
New Delhi - 1100 001
Fax: 011-2338 6118

Dear Sir,

Sub: Notice of Strike

In accordance with the provisions contained in sub-section (1) of Section 22 of the Industrial Disputes Act, 1947, we the undersigned trade unions functioning in Hindustan Petroleum Corporation Limited (HPCL) and Bharat Petroleum Corporation Limited (BPCL), hereby give you notice that the workmen of HPCL and BPCL working in the Refineries, Marketing Establishments and all other offices all over the country shall go on strike from 6.00 A.M. of 25th March 2003 to 6. A.M. of 28th March, 2003 for the reasons explained in the annexure.

Thanking you,

Yours sincerely,

Sd/- Sd/-
Petroleum Workmens Union, BPCL Refinery Petroleum Workers Union, Chennai Mumbai.

Sd/- Sd/-
Bharat Petroleum Technical & Non Technical Petroleum Employes Union (BPCL),

Employees Association, Refinery, Mumbai Chennai.

Sd/- Sd/-
Bharat Petroleum Karmachari Union, Mumbai Petroleum Employees Association
(BPCL), Cochin.

Sd/- Sd/-
Maharashtra General Kamgar Union, Mumbai All India Petroleum Workers Union
(HPCL), Mumbai.

Sd/- Sd/-
BPC Employees Union (CITU), Uran, Mumbai Hindustan Petroleum Karmachari Union, Mumbai
(Refinery)

Sd/- Sd/-
Bharat Petroleum Corp. (R) Employees Union, Hindustan Petroleum Karmachari
Mumbai. Union, Mumbai (Marketing)

Sd/- Sd/-
Bharat Petroluem Process Technician & Petroleum Workers Union (HPCL)
Analyst Union, Refinery, Mumbai Kolkatta.

Sd/- Sd/-
Bharatiya Kamgar Karmachari Mahasangh, Bengal Oil & Petrol Workers Union
Mumbai (BPCL & HPCL Refinery) (HPCL), Kolkata

Sd/- Sd/-
Petroleum Workers Union (BPCL), Hindustan Petroleum Employees
Kolkatta. Union, Delhi.

Sd/- Sd/-
Bengal Oil & Petrol Workers' Union, Petroleum Workers Union, HPCL
Kolkatta, BPCL Unit, Delhi.

Sd/- Sd/-
Bharat Petroleum Technician Union, Petroleum Employees Union (HPCL)
Delhi Chennai.

Sd/- Sd/-
Petroleum Workers Union, BPCL Unit Petroleum Workers Association (HPCL)
Delhi Cochin.

Sd/- Sd/-
HPCL Employees Union (CITU), Visakh Petroleum Workers' Union,

Visakh
Refinery (Circular notice dt. 3/2/03) Refinery (Ref date of
earlier notice
dt 3/2/03)"

"ANNEXURE TO STRIKE NOTICE"

The strike is in opposition to and demanding reversal of the decision of the Government of India to privatise Hindustan Petroleum Corporation Ltd., through strategic sale and Bharat Petroleum Corporation Ltd. Through Initial Public Offerings including in the international market. The trade unions are of the considered opinion that the privatisation of the consistently profit making navaratna oil PSUs shall cause immense harm to the economy and the people of the country and of course, the employees of these two oil PSUs.

HPCL and BPCL came into being under two different acts of Parliament. The SSO (acquisition of undertakings in India) Act of 1974 created HPCL and the Burma Shell (acquisition of undertakings in India) Act of 1976 created the BPCL. The identical preamble of both the acts clearly reflects the strategic national importance, which prompted nationalisation of the foreign oil companies and continues to be valid unquestionably. The preambles mentions, "it is expedient in the public interest to acquire ownership of these companies, in order to ensure that the ownership and control of petroleum products distributed and marketed in India by these companies are ves ted in the state and thereby so distributed as best to sub-serve the common good"

13. While the strike notice dated 5.3.2003 itself does not refer to the provisions of Section 22 of the Act, the basis of the strike notice stated is the notice previously issued to the Minister for Petroleum and Natural Gas, Government of India, dated 27.2.2003 and it is crystal clear that all the Trade Unions, who are the signatories, have given a strike notice in accordance with the provisions contained in sub-Section (1) of Section 22 of the Act. We need not take further strains to probe into the matter as to whether it relates to Section 22 of the Act or outside the same. The dispute is very much within the realm of Industrial Disputes Act, 1947 as the strike notice has been given as contained in Section 22 (1) of the Act and as a necessary corollary, the conditions enumerated therein have got to be followed. The appellant Management has promptly referred the matter to the Conciliation Officer as is borne out by the following communication and the strike notice, which has been issued to the Union Ministry of Petroleum and which was forwarded to the appellant Management, was also enclosed to the above communication dated 10.3.2003.
BHARAT PETROLEUM CORPORATION
LIMITED
1, Ranganathan Gardens, Off 11th Main Road,
Anna Nagar,
Post Bag No.1212 & 1213,
Chennai - 600 040.

Phone 6216869

HRS.S.STR.CON 10.3.2003
The Regional Labour Commissioner (Central)
Office of the Regional Labour Commissioner (C)
No.26, Haddows Road, Shastri Bhavan,
CHENNAI - 600 006.

Dear Sir,

STRIKE NOTICE ISSUED BY PETROLEUM EMPLOYES UNION (PEU) CHENNAI : PROPOSED STRIKE FROM 25.3.2003 TO 27.3.2003

Petroleum Employees' Union, Chennai, has vide their letter Ref.PEU/M/ 11/2003 dated 5.3.2003 issued a strike notice stating that PEU proposes to go on strike from 25.3.2003 to 27.3.2003 against Govt. of India's disinvestments policy with regard to BPC and HPC. Enclosed is a copy of the strike notice for your information and necessary action.

Yours faithfully,
for BHARAT PETROLEUM CORPN. LTD.
Sd/-
T.SOMANATH
DGM (HRS) SOUTH
encl: as above"

14. Then the Regional Labour Commissioner concerned has acted upon the same in accordance with Section 12 of the Act and his communication is as follows:
No.B.8 (45)/2002.RI.C.PA
Government of India
Ministry of Labour

Office of the
Regional Labour Commissioner,
(Central), Shramraksha Bhawan,
Sion, Mumbai - 400 022.
Dated: March 11, 2003

The Executive Director HR.
Bharat Petroleum Corporation Limited,
Bharat Bhawan, 4&6, Corimbhoy road,
Mumbai-38.
Petroleum Employees Association (BPCL),
Cochin
C/o BPCL
Petroleum Workers Union, Chennai
C/o BPCL
Bengal Oil & Petrol Workers' Union,

Kolkatta, BPCL
C/o BPCL
Petroleum employees Union (BPCL), Chennai
C/o BPCL

Sub: strike Notice served by the Unions Operating in BPCL over the government policy on disinvestments of Hindustan petroleum corporation limited and BPCL

Dear Sir(s),

This is to inform you that I shall hold Conciliation Proceedings under Section 12 of Industrial Dispute Act, 1947, in the above mentioned industrial dispute in this office on 20.3.2003 at 11.00 hrs and 1100 hrs with a view to bring about an amicable settlement on this dispute. You are, therefore, requested to attend the Conciliation Proceedings/Joint Discussions either in person or through a duly authorised representative with all-relevant records and documents and evidence oral/documentary. Please note that if you fail to attend the conciliation/discussions without reasonable cause in advance of the aforesaid date, the dispute shall be proceeded 'ex parte'.

In this connection, your attention is invited to the obligations imposed under Section 22 (1), 22 (2) and 33 of Industrial Disputes Act, 1947.

Your written comments on the issue raise by the Union/Workman (copy enclosed), be furnished to this office with a copy to the Union/ Workman. The comments (in five copies) and the following particulars may be sent to this office by 17.2.2003 as it would facilitate prompt disposal of the case.

(a) No. of workman in the concern/establishment.
(b) No. & occupation of workmen affected by this dispute.
(c) Whether any of the demands are covered by the provisions of any other legislation or settlement or award.

Yours faithfully,
Sd/-
(M.P.M. Sivakumar)
Regional Labour Commissioner
(Central), Mumbai.

15. The said notice having been served on both the parties and the appellant and respondents 1 and 2 having participated in the conciliation proceedings, which was firstly set on 20.3.2003, then adjourned at the instance of the respondents 1 and 2 to 24.3.2003 and again adjourned, it cannot lie in the mouth of the respondents 1 and 2 to plead contra that the matter is not within the realm of the Industrial Disputes Act, 1947. Even the pleading to that effect by the appellant cannot have any legal basis as the reference has been made by the appellant to the Conciliation Officer and the strike notice issued by the respondents 1 and 2 and both the parties are bound by the conciliation proceedings and the effect thereof and they have to wait till the Conciliation Officer takes his decision one way or the other.

16. In view of the above, we hold that the conciliation proceedings are pending relating to the issue for which strike notice has been given and as the conciliation proceedings are pending, the prohibition contained in clause (d) of sub-Section (1) of Section 22 of the Industrial Disputes Act, 1947, came into operation right from the date of the notice of Conciliation Officer and as such, the strike by the respondents 1 and 2 is illegal in view of Section 24 of the Act.

17. Ms. R. Vaigai, learned counsel, then raised yet another contention regarding the maintainability of the writ petition against the respondents 1 and 2, who are the employees union on the ground that they cannot be termed as 'other authorities' within the meaning of Article 12 of Indian Constitution. In support of her contention, she has cited the judgments of the Supreme Court in (i) SOM PRAKASH REKHI v. UNION OF INDIA (1981) 1 S.C.C. 449), (ii) BANK OF INDIA v. T.S. KELAWALA (1990) 4 S.C.C. 744) and (iii) VST INDUSTRIES LTD v. VST INDUSTRIES WORKERS' UNION (2001) 1 S.C.C. 298) as also a decision of the Kerala High Court in (iv) CHEMOSYN (P) LTD. V. KERALA MEDICAL AND SALES REPRESENTATIVES' ASSOCIATION (1988 (2) L.L.J. 43).

18. In SOM PRAKASH REKHI's case (cited (i) supra), a question arose as to whether Bharat Petroleum Corporation is a State within the meaning of Article 12 of Constitution of India. It was held that the said Corporation comes under the control of the Government of India and as such, is a State within the meaning of Article 12. In fact, the facts of the above case have got no bearing on this case as a claim was made against the Burma Shell Oil Storage Limited, which, later on, became Bharat Petroleum Corporation, claiming terminal benefits, which were withheld and which were sought to be reduced and when the same were sought to be enforced, a contention was raised

as to whether a writ is maintainable against the said employer. It was held that the employer therein, in fact who is the appellant herein, is amenable to writ jurisdiction.

19. In the case of BANK OF INDIA (cited (ii) supra), it was held by the Supreme Court that the working class has indisputably earned the right to strike an industrial action after a long struggle so much so that the relevant industrial legislations recognise it as their implied right. But the Supreme Court also held that the legislation, i.e. Industrial Disputes Act in the instant case and there also, circumscribes the said right by fixing certain conditions under which alone its exercise may become legal and that a legal strike may not invite disciplinary proceedings while an illegal strike may do so it being a misconduct. The legal principles enunciated in the above Supreme Court judgment fully support the limitations which are placed by the Industrial Disputes Act against the strike so far as the employees are concerned and against the lock outs so far as the employers are concerned. There are checks and balances under Section 22 of the Act and also the consequences so clearly stated in Section 24 of the Industrial Disputes Act. A strike, which is violative of sub-Section (2) of Section 22 of the Act, is illegal under Section 24 of the Act and also the lock-out against sub-Section

(2) of Section 22 of the Act by the employer is equally illegal under Section 24.

20. The third decision in VST INDUSTRIES's case (cited (iii) supra) deals with the amenability of a company, incorporated under the Companies Act, to writ jurisdiction under Article 226 of Constitution of India. In the said case, the dispute was as to whether the employees in the canteen of a company can be considered as employees of the company itself and whether a writ can be maintained directing the company to treat those employees as its employees. In fact, the facts are in a different context and the only issue was as to whether the company, incorporated under the Companies Act and not performing any public duty, can be made amenable to writ jurisdiction. Nevertheless, having regard to the repercussions involved, the Supreme Court did not disturb the judgment of the High Court which had issued a writ as sought for.

21. In so far as the judgment of the Kerala High Court in CHEMOSYN' s case (cited (iv) supra) is concerned, it was held that a Trade Union, registered under the Trade Unions Act, 1926, is not amenable to writ jurisdiction as a trade union does not come within the definition of 'other authorities' under Article 12 of Constitution. But the facts therein are totally different from the instant one. There, the employer is a company and the respondent is the Association of Kerala Medical and Sales Representatives and as the members of the said Association, who had been deputed for training, went on leave defying the instructions and when the writ petition was filed to direct the Association to desist its members from indulging in any illegal activities, it was held that such a relief cannot be granted. The same cannot have any bearing on this case.

22. In ANDI MUKTA S.M.V.S.S.J.M.S. TRUST v. V.R. RUDANI (1989) 2 S. C.C. 691), an adjudication was made not in the context of Article 12 read with Article 32 of the Constitution but in the context of Article 12 read with Article 226 of the Constitution. In paragraph 20 of the judgment, it is held,

"The term 'authority' used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as nonfundamental rights. The words 'any person or authority' used in Article 22 6 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists, mandamus cannot be denied."

23. This judgment was referred to by the Supreme Court in VST

INDUSTRIES' case (cited (iii) supra) and has not been disapproved. Here, the respondents 1 and 2, which are the registered bodies under Trade Unions Act, are legal persons and owe a duty under the statute, the provisions of which have been mentioned supra, not to go on strike unless the provisions of sub-Section (1) of Section 22 of the Act are complied with. The Parliament has properly thought of imposing restrictions on the employees from striking the work enumerating the conditional prohibitions. That apart, Section 22, including Section 24, of the Industrial Disputes Act is still on the statute book and has not been declared ultra vires the Constitution and as the right to strike a work is regulated by the statute and as the statutory duty has not been followed by the respondents 1 and 2 and as the respondents 1 and 2 would have been entitled to challenge if any illegal lock-out has been declared by the employer, equally the appellant Corporation also is entitled to seek enforcement of the statutory prohibition imposed upon the respondents 1 and 2 from striking the work as it is in utter disregard and violation of clause (d) of sub-Section (1) of Section 22 of the Industrial Disputes Act.

24. In the circumstances, the Writ Appeal and Writ Petition are allowed. No costs. Consequently, connected W.A.M.Ps. and W.P.M.Ps. are closed.

(B.S.R., CJ) (D.M., J)
bh/

Internet : Yes
LR Entry : Yes

To

1. Petroleum Employees Union,
rep. By its General Secretary,
P.S. Janardhanan,
Guruswamy Buildings,
6, Kachaleeswarar Street,
CHENNAI - 600 01.

2. Petroleum Workers Union,
rep. By its General Secretary,
G. Saravanan,
35, Vaidyanathan Street, Tondiarpet,
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3. The Regional Labour Commissioner,
Mumbai.

4. Regional Labour Commissioner (Central),
Shahstri Bhavan, Haddows Road,
CHENNAI.

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